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August 17, 2021

VIA ECF

Honorable Jesse M. Furman
United States District Court
Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007

Re: *Denny Martin v. Berkshire Life Insurance Company of America*
Civ. Action No.: 20 CV 10428 (JMF)
RR File No.: 5072-42

Dear Judge Furman:

This office represents defendant, Berkshire Life Insurance Company of America ("Berkshire") in the above referenced action (the "Disability Action"). This letter is written in accordance with Your Honor's Individual Rules and Practices in Civil Cases, Redactions and Sealed Filings, par. 7 sub-part C. Berkshire seeks leave to file documents under seal that were produced in this action by counsel for plaintiff Denny Martin ("Martin") and marked as "confidential" pursuant to the Confidentiality Stipulation and Protective Order dated May 28, 2021 (ECF doc. No. 18) ("Confidentiality Order"). The documents will be filed as exhibits to Berkshire's opposition to a Motion to Quash filed by Thomas Liotti (ECF doc. no. 19). Mr. Liotti was Martin's counsel in a matrimonial action entitled Allison Martin v. Denny Martin, Supreme Court, New York County, Index No. 303503/2018 (the "Divorce Proceeding"). The opposition is due August 19, 2021.

Berkshire served a subpoena on Mr. Liotti's firm seeking certain documents from the Divorce Proceeding contained in Martin's file maintained by Mr. Liotti's office. In response, Mr. Liotti seeks a protective order because it is alleged the documents are privileged and shielded from production under Domestic Relations Law Section 235 (1) ("DRL 235"), which requires a Court Order for production. In support of its opposition to the motion to quash, Berkshire will submit as exhibits certain documents from the Divorce Proceeding that were produced in the Disability Action by Martin.

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Pursuant to the Confidentially Order (ECF doc. No. 18), all documents designated as “CONFIDENTIAL” may be disclosed to the Court (par. 5(d)), and there is no presumption that such information shall be filed with the Court under seal (par. 11). The parties are instructed to follow the Court’s procedures for requests for filing under seal.

The subject documents include the following:

1. Defendant’s Affirmation In Opposition to Plaintiff’s Order to Show Cause (affirmation of Thomas F. Liotti) dated January 11, 2021 and marked MARTIN 05779-05795 (attached as Exhibit “A” to the Declaration of Jay Kenigsberg In Support of the Motion to Seal Documents (“Kenigsberg Dec.”));
2. Defendant’s Affidavit In Support of Defendant’s Cross-Motion and In Opposition to Plaintiff’s Order to Show Cause (affidavit of Denny Martin) dated March 5, 2020 and marked MARTIN 05799-05805 (attached as Exhibit “B,” Kenigsberg Dec.);
3. Decision and Order, Motion Sequence no. 7 dated August 5, 2020 and marked MARTIN 05905 (attached as Exhibit “C,” Kenigsberg Dec.);
4. Decision and Order, Motion Sequence no. 8 dated August 5, 2020 and marked MARTIN 05915-05916 (attached as Exhibit “D,” Kenigsberg Dec.);
5. Decision and Order, Motion Sequence no. 9 dated August 5, 2020 and marked MARTIN 05921 (attached as Exhibit “E,” Kenigsberg Dec.); and
6. Decision and Order, Motion Sequence no. 10 dated August 5, 2020 and marked MARTIN 05936-05937 (attached as Exhibit “F,” Kenigsberg Dec.)

Out of an abundance of caution, Berkshire seeks leave to file Exhibits A through F under seal in connection with its opposition to the Motion to Quash because: (1) the documents are stamped “confidential” in this matter in accordance with the Confidentially Order; (2) are presumably the type of documentation that would be maintained by Mr. Liotti’s office and would be subject to production in accordance with the subpoena; (3) are relevant with respect to Berkshire’s opposition to the Motion to Quash; and (4) most importantly, may be subject to DRL 235.

We have reached out to Martin’s counsel in this case to discuss the request to seal the subject documents. I left messages with Martin’s counsel but have not received responses to my calls. I do not believe that counsel would raise any reasonable objection given the fact that the sealing request involves documents produced in this case by Martin. In any event, Berkshire

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respectfully requests that the Court review the request currently as its opposition to the motion to quash is due on August 19, 2021.

For the foregoing reasons, Berkshire respectfully requests that the Court issue an order authorizing it to file Exhibits A through F under seal in connection with its opposition to the Motion to Quash served by Mr. Liotti.

We thank the Court for its attention to this matter.

Respectfully submitted,

RIVKIN RADLER LLP

Jay D. Kenigsberg

Jay D. Kenigsberg

Encl.

cc: All counsel of record (via ECF)

The motion to seal is granted temporarily. The Court will assess whether to keep the materials at issue sealed or redacted when deciding the underlying motion. The Clerk of Court is directed to terminate ECF No. 23. SO ORDERED.

A handwritten signature in black ink, appearing to read "Jay D. Kenigsberg", with a stylized, flowing script.

August 17, 2021